


U.S. COURT OF
FEDERAL CLAIMS

On July 18, 2017, Plaintiff filed a Reply to the Government's July 5, 2017 Motion. ECF No. 27. Exhibit A of Plaintiff's July 18, 2017 Reply included a letter, dated May 1, 2009 (the "Assignment Letter"), purporting to "appoint[] Astornet Technologies, Inc. as the exclusive licensee to pursue TSA opportunity [sic] for the CAT/BPSS." The Assignment Letter refers to Plaintiff as the "Owner of patent US7,639,844." Exhibit C of Plaintiff's July 18, 2017 Reply included a signed and notarized statement (the "Notarized Statement") executed by Plaintiff, in his personal capacity and in his capacity as "CEO/President" of Astornet Technologies, Inc., representing that "the exclusive license of Patent 7,639,844 . . . assigned from Mr. Michael Haddad, the inventor and owner of the 7,639,844 patent to Astornet Technologies, Inc., took place on May 1st, 2009[.]" The Notarized Statement also represents that "Mr. Michael Haddad certify [sic] that as per the record, that he signed a letter dated 5/1/2009 granting Astornet Technologies, Inc. a license[.]" Therein, Plaintiff twice affirmed the date of the Assignment Letter as May 1, 2009.

The USPTO, however, assigns patent numbers "after the issue fee has been paid."¹ The issue fee for the '844 Patent was paid on November 9, 2009.² Therefore, Plaintiff could not have known the patent number of the '844 Patent, *i.e.*, 7,639,844, prior to November 9, 2009. As such, the Assignment Letter's designation of Plaintiff as the "Owner of patent US7,639,844" is facially inconsistent, *i.e.*, the Assignment Letter is dated May 1, 2009, more than six months before the '844 Patent would have been assigned its patent number.

For these reasons, Plaintiff is ordered to file a response on, or before, October 20, 2017, explaining how Plaintiff knew the patent number of the '844 Patent on May 1, 2009, the date of the Assignment Letter. If a response is not filed by that time, the court will dismiss the above-captioned case, pursuant to RCFC 41(b), with prejudice.

IT IS SO ORDERED.



SUSAN G. BRADEN
Chief Judge

¹ *Patent Process Overview*, UNITED STATES PATENT AND TRADEMARK OFFICE, <https://www.uspto.gov/patents-getting-started/patent-process-overview#step7> (last visited September 21, 2017) ("The notice of allowance will list the issue fee and may also include the publication fee that must be paid prior to the Patent being issued. . . . A patent number and issue date will be assigned to an application and an Issue Notification will be mailed after the issue fee has been paid and processed by the USPTO.").

² See "Issue Fee Payment (PTO-85B)" dated November 9, 2009 within the "Image File Wrapper" of the '844 Patent, UNITED STATES PATENT AND TRADEMARK OFFICE: PATENT APPLICATION INFORMATION RETRIEVAL, <https://portal.uspto.gov/pair/PublicPair> (select "Patent Number" and search "7639844"; then select "Image File Wrapper").